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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

ARBITRATION PETITION NO.131 OF 2018

Mr.Jaysing Gopalrao Huzre	..Petitioner
Vs.	
Kolhapur Bhoi Samaj Sahakari Griha Nirman Sanstha Ltd.	..Respondent

Mr.Mandar Bagkar i/b. Mr.Chetan Patil for Petitioner.

CORAM : G.S. KULKARNI, J.

DATE : 14th AUGUST, 2019

P.C.:

Heard learned Counsel for the petitioner.

2. On 10 December, 2018 this Court had passed the following order:-

- “1. Not on board. Upon mentioning, taken on board.
2. The Learned Advocate for the Petitioner shall serve a copy of the above Petition on the Respondent by hand-delivery.”

3. Thereafter on 26 June 2019 this Court had passed the following order:-

- “1. In pursuance of the order dated 10 December 2018 passed by this Court the petitioner was permitted to serve the respondent by private service. Accordingly, it is stated that the respondent is served and an affidavit of service to that effect is already placed on record. None appears for the respondent.
2. To grant a final opportunity to the respondent to appear in this proceeding, learned Counsel for the petitioner is permitted to serve the respondent by private service and place on record an affidavit of service before the returnable date.

3. Accordingly stand over to 10 July 2019. Learned Counsel for the petitioner shall also forward a copy of this order alongwith the notice of the Advocate. It is clarified that on the adjourned date of hearing despite notice the respondent does not appear, the Court shall proceed to hear the petition and pass appropriate order.”

4. It is stated that the respondent is served. Despite granting of a final opportunity to the respondent to appear in the proceedings, the respondent has not appeared.

5. In the above circumstances, this petition under Section 11 of the Arbitration and Conciliation Act, 1996 (for short, “the Act”) is required to be taken up for hearing.

6. The petitioner has prayed for appointment of an arbitral tribunal to adjudicate the disputes and differences between the parties which are stated to have arisen under the agreement dated 25 February 2007. The arbitration agreement between the parties is contained in clause no.3.19 (page 17 of the paper-book). Under the agreement in question the respondent had awarded to the petitioner a work of construction on 48 residential plots.

5. The case of the petitioner is that the petitioner making an investment started with the construction work under the contract. The petitioner has expended an amount of Rs.64,06,804/- in undertaking the contractual construction. The petitioner contends that the respondent as per the terms and conditions of the agreement was required to pay to the petitioner the outstanding amounts in 12 installments on the basis of work completed by the petitioner. Although invoices were raised by the petitioner, the respondent on some pretext, not acceptable to the petitioner, refused to make payment. Thus

according to the petitioner, disputes and differences have arisen between the parties. A notice dated nil/03/2018 was issued on behalf of the petitioner to the respondent. It is stated in paragraph 4 of the petition that the said notice was received by the respondent on 6 March 2018. Despite receipt of the notice, no steps were taken on the part of respondent to appoint an arbitral tribunal. Accordingly, the present petition came to be filed in the month of December 2018.

6. As none appears for the respondent, averments as made in the petition would require to be taken as uncontroverted. There appears to be an arbitration agreement between the parties as contained in clause 3.19 of the said agreement. There is an invocation of the arbitration agreement on the part of the petitioner requesting the respondent to appoint an arbitrator which was not accepted by the respondent.

7. In the above circumstances, the petition is required to be allowed. It is accordingly allowed in the following terms:-

ORDER

- (i) Mr.J.N.Shanbhag, Retired Principal District Judge is appointed as a sole Arbitrator to arbitrate the disputes and differences between the parties under the agreement dated 25 February 2007;
- (ii) The learned prospective sole arbitrator, before entering the arbitration reference, shall forward a statement of disclosure as per the requirement of Section 11(8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996, to the Prothonotary & Senior Master of this Court, to be placed on record of this petition with a copy to be forwarded to both the parties;
- (iii) At the first instance, the parties shall appear before the prospective sole arbitrator within 15 days from today on a date which may be mutually fixed by the prospective sole arbitrator;

- (iv) All contentions of the parties on merits of the disputes are expressly kept open;
- (v) The fees payable to the arbitral tribunal shall be in accordance with the Bombay High Court (Fee Payable to the Arbitrators) Rules, 2018;
- (vi) The petition is disposed of in the above terms. No costs.
- (vii) Office to forward a copy of this order to the learned Arbitrator on the following address:

Mr.J.N.Shanbhag,
Retired Principal District Judge
30, Amey Nisarg, Nagala,
Behind Mahavir College,
Kasaba Bavada Road,
Kolhapur 416006.
Mobile No.8446164444
9595989184.

[G.S. KULKARNI, J.]